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CONSTITUTIONAL LAW—MECHANIC'S LIEN—EQUAL PROTECTION OF LAWS—STATUTE ALLOWING ATTORNEY'S FEES.—The appellant attacks the constitutionality of a statute which provides that the plaintiff in a suit to enforce a mechanic's or materialman's lien, if successful, shall recover a reasonable attorney's fee not to exceed 10% of the amount of the judgment, regardless of whether he recovers the entire amount sued for. Fla. Comp. L. Ann. § 2218. *Held*, the statute was unconstitutional since it denied to the defendant in such suits the equal protection of the laws. *Union Terminal v. Turner Construction Co.* (5 C. C. A. 1918) 247 Fed. 727.

It is well established that the legislature may legislate as to classes under proper circumstances. Such classification, however, cannot be arbitrary, but must be based upon some reasonable distinction. *Braceville Coal Co. v. The People* (1893) 147 Ill. 66, 35 N. E. 62; *Gulf, etc., Ry. v. Ellis* (1896) 165 U. S. 150, 17 Sup. Ct. 255. Under this power statutes for assessing double damages or attorney's fees upon the defendant in favor of the plaintiff, when successful, have been sustained in various cases; such as in actions for damages to live stock caused by the failure of the defendant railroad to fence its tracks as required by law, *Kansas Pac. Ry. v. Mower* (1876) 16 Kan. 573; *Missouri Pac. Ry. v. Humes* (1885) 115 U. S. 512, 6 Sup. Ct. 110; *Railroads v. Crider* (1892) 91 Tenn. 489, 19 S. W. 618, or in suits against a railroad company for damages from fire caused by its locomotive, *Atchison, etc., R. R. v. Matthews* (1898) 174 U. S. 96, 19 Sup. Ct. 609, or in suits against common carriers for overcharges. *Dow v. Beidelmen* (1887) 49 Ark. 455; *Burlington, etc., R. R. v. Dey* (1891) 82 Iowa 312, 48 N. W. 98. The ground upon which these statutes are sustained is that it is a reasonable use of the police power to impose a penalty for such wrongful acts. See *Peoria, etc., Ry. v. Duggan* (1884) 109 Ill. 537. But in cases where statutes impose attorney's fees upon the defendant in favor of the plaintiff in an action to enforce a mechanic's or a materialman's lien there is a division of authority as to the constitutionality of such statutes. If the statutes provide that the plaintiff is entitled to attorney's fees, only if he recovers the full amount sued for, *Vogel v. Pekoc* (1895) 157 Ill. 339, 42 N. E. 386; *contra*, *Hocking Valley Coal Co. v. Rosser* (1895) 53 Oh. St. 12, 41 N. E. 263, or if the defendant acted in bad faith in his refusal to settle, *Williamson v. Liverpool, etc., Ins. Co.* (1905) 141 Fed. 54, they have been held constitutional. But if the statutes impose attorney's fees upon the defendant even though the plaintiff fails to recover the full amount sued for and regardless of the defendant's good or bad faith, some courts have refused to sustain them, *Davidson v. Jennings* (1900) 27 Colo. 187, 60 Pac. 354; *Atkinson v. Woodmansee* (1903) 68 Kan. 71, 74 Pac. 640; *contra*, *Dell v. Marvin* (1899) 41 Fla. 221, 26 So. 188, on the ground that they impose a penalty upon the defendant even though he acted with reasonable cause in refusing to pay more than the plaintiff was entitled to recover. See *Hocking Valley Coal Co. v. Rosser*, *supra*. It would seem that this reasoning is sound and that, therefore, the decision in the principal case is correct.

ELECTIONS—VACANCY IN CONGRESS—REAPPORTIONMENT.—In 1916 one Fitzgerald was elected to the Sixty-fifth Congress from the Seventh New York District. In 1917 the legislature of New York changed the boundaries of districts from the third to the tenth, inclusive, so that

part of the territory formerly in the seventh was placed in another district and some territory not previously in the seventh was added to it. In 1918 Fitzgerald resigned and the governor called an election in the seventh district to fill the vacancy. *Held*, two judges dissenting, that the election must be held in the district as changed and not in the district as it existed at the time of the election of Fitzgerald. *People ex rel. Fitzgerald v. Voorhis* (1918) 222 N. Y. 494.

Under the Constitution of the United States (Art. 1, § 4) Congress may make regulations as to the manner of choosing representatives in Congress, and it has provided that they shall be elected in each state by districts equal in number to the number of representatives allotted to the state, and that no district shall elect more than one representative. 37 Stat. 13; see *Ex parte Yarbrough* (1884) 110 U. S. 651, 660, 4 Sup. Ct. 152. To allow an election in the district as changed would conflict with this provision, since not only would the residents in the territory newly annexed to the district be allowed to participate in the election of two representatives, *Hunt v. Menard* (House of Reps. 1869) McCrary, Elections (4th ed.) § 190, 1 Hinds, Precedents of the House of Representatives § 327d, but the people in the territory cut off from the seventh would be denied representation. *Hunt v. Menard*, *supra*; cf. *Warren v. Mayor of Charleston* (1854) 68 Mass. 84, 105. It is difficult, moreover, to see how a vacancy in the Sixty-fifth Congress could exist in a district which, like the district as changed, did not exist when that Congress was chosen. The court considered that there could be no election in the old district on the ground that the legislature had put an end to its existence. But since the legislature could not abridge the terms of the representatives chosen in 1916 for two years and thus the reapportionment could not become effective, under normal conditions, during the life of the Sixty-fifth Congress, Mechem, Public Officers, § 467; cf. *Lowe v. Commonwealth* (1861) 60 Ky. 237, it would seem that the reapportionment was not intended to affect the representation in the Sixty-fifth Congress, but was intended to deal solely with elections to subsequent Congresses, and therefore that the legislative intention was to preserve the existing districts until the termination of the life of the Sixty-fifth Congress. Moreover, since the reapportionment comprehended an extensive scheme of redistricting, it would seem that the legislature intended that the provision for the creation of the new seventh district should become effective only when the provisions for the creation of the other new districts took effect, cf. *Matter of Dowling* (1916) 219 N. Y. 44, 59, 113 N. E. 545, and that until all the provisions of the reapportionment took effect, the old district should continue its existence. Cf. *Matter of Dowling*, *supra*.

EQUITY—EFFECT OF JURY VERDICT IN EQUITABLE ACTION.—In a bill to enjoin trespass and recover damages, the chancellor sent the parties to law to try the title. *Held*, that the finding of the jury was not merely advisory upon the chancellor but controlling, and would be set aside only if flagrantly opposed to the evidence. *Fort v. Wiser* (Ky. 1918) 201 S. W. 7.

The equity court has inherent power to decide any question of law or fact in any case over which it has jurisdiction. Shipman, Equity Pleading § 63. The chancellor may in his discretion, however, either submit issues of fact to a jury, or may send the parties to the law